

MINUTES

OF THE

CONVENTION

OF THE

Delaware State,

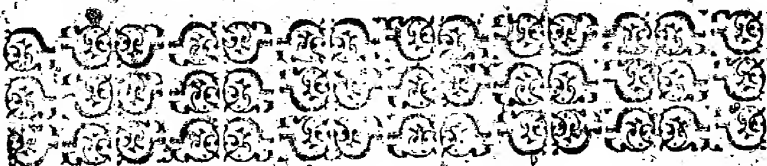
*Which commenced at Dover, on Tuesday the
twenty-ninth day of November, in the
year of our Lord, One thousand seven
hundred and ninety-one,*

For the purpose of reviewing, altering, and
amending, the Constitution of this State,
or if they see occasion, for forming
a new one instead thereof.

W I L M I N G T O N:

Printed by PETER BRYNBERG and SAMUEL ANDREWS.

M,DCC,XCII.



I N T H E
GENERAL ASSEMBLY
O F T H E
Delaware State.

Thursday, *September 8*, 1791.

1. **R**ESOLVED *unanimously*, That in the opinion of this General Assembly, alterations and amendments of the Constitution of this State are necessary; and that the same should be revised in, such manner as may be best adapted to the end proposed.

And whereas, governments are instituted for securing the unalienable rights of man, and the protection of individuals in the enjoyment of life, liberty, and property; and all government originates from the people, is founded in compact only, and intended solely for the good of the whole. *And whereas*, it is expressly declared by our own Bill of Rights, "That whenever the ends of government are perverted, and public liberty manifestly endangered, the people may, and of right ought, to establish a new, or reform the old government." From which, as well as from the nature of society, and the principles of government, it appears that the people have at all times, an inherent right to alter and amend the form of government, in such manner as may appear to them best adapted to the end proposed. *And whereas* it has been found from experience, that the great and important ends of government are not effected by our present form of government;

government; and that the general departments thereof are so blended together, and improperly arranged, as to prevent an impartial, beneficial, and energetic operation. *And whereas*, the burdens and expences of government are with difficulty borne; and in some instances the present form is contradictory to the constitution of the United States, which every member of the Legislature, and all Executive and Judicial officers must be bound by oath or affirmation to support. *And whereas*, by the thirtieth article of the constitution of this State the power of revising the same, and of altering and amending certain parts thereof, is vested in the General Assembly; and it appears to this General Assembly, that the exercise of the power of altering and amending the constitution by the legislature, would not be productive of all the valuable purposes intended by a revision, nor be so satisfactory and agreeable to our constituents; and that it would be more proper and expedient to recommend to the good people of this state, to choose deputies for this special purpose, to meet in convention. It is therefore, further

2. *Resolved*, That it be recommended to the good people of the several counties in this state, to choose a suitable number of deputies, to meet in convention, for the purpose of reviewing, altering, and amending the constitution of this state; or, if they see occasion, for forming a new one instead thereof.

3. *Resolved also*, That it is the opinion of this General Assembly, That the said convention consist of the number of thirty persons; that is to say, ten for the county of New-Castle, ten for the county of Kent, and ten for the county of Sussex; and be chosen on the first day of October next, in the same manner, by the same persons, at the same places, and under the same regulations as are directed and appointed by the election laws of this state; save that any free white citizen of this state, of the age of twenty one years and upwards, shall be eligible to a seat in the said convention, and that the returns should be made to the convention so chosen: and that the said convention should meet on Tuesday the twenty-ninth day of November next, at the town of Dover.

4. *Resolved*, That the members and officers of the said convention, shall be entitled to receive the like wages as are now paid to the members and officers of the General Assembly; and that the presiding member of the said convention, draw his order, on the Treasurer of this state, for such wages in favour of the respective members and officers of said convention.

5. *Resolved*,

5. *Resolved*, That the several sheriffs of the state be furnished with a copy of these resolutions, by the President, certified by the clerk of each house; and that the said sheriffs, or other officers who may hold the said election, do give public notice as soon as conveniently may be, by twenty advertisements at least, set up in the most public places in each county, of the said election of a convention; and that the said clerks furnish the President with said copies.

Extract from the Minutes

JAMES BOOTH,

Clerk of Assembly.





MINUTES

O F T H E

CONVENTION

O F T H E

DELAWARE STATE,

Which commenced at Dover,

On Tuesday the 29th day of November,
in the Year of our Lord, one thousand
seven hundred and ninety-one.

Tuesday, P. M. November 29, 1791.

THIS being the day appointed by the Legislature of this
state for the meeting of the Convention, a number of the
persons delegated for that purpose, met, to wit.

From New-Castle County.

John Dickinton,
Edward Roche,
Robert Haughey,
George Monro,
Joseph Tarnall,
Robert Coram.

From Kent County.

Nicholas Ridgely,
John Clayton,
Thomas White.
James Morris,
James Sykes,
Richard Baffer,
Benjamin Dill.

From Suffex County.

Isaac Cooper
Peter Robinson,
Isaac Beauchamp,
William Moore. \

Adjourned to ten o'clock to-morrow morning.

Wednesday, A. M. Nov. 30, 1791.

The returns of the elections held for the several counties of this state, were read, by which it appeared that the following persons were elected deputies for the said counties respectively, to wit,

For New-Castle County.

Thomas Montgomery,
John Dickinson,
Robert Armstrong,
Edward Roche,
William Johnston,
Robert Haughey,
George Monro,
Joseph Tatnall,
Robert Coram,
Kenfey Johns.

For Kent County.

Nicholas Ridgely,
John Clayton,
Robert Holliday,
Thomas White,
Manlove Emmerson,
James Morris,
James Sykes,
Richard Bassett,
Benjamin Dill,
Henry Mollenston.

For Suffex County.

Isaac Cooper,
George Mitchell,
John Wile Batson,
Peter Robinson,
Rhoads Shankland,
Charles Polk,
Isaac Beauchamp,
John Collins,
William Moore,
Daniel Polk.

All of whom appeared, except Messrs. Montgomery, Johns, Johnston, Holliday, Mitchell, Batson, Charles Polk, and Collins.

Adjourned to four o'clock, P. M.

Eodem

Eodem Die, P. M.

The convention met, and adjourned to ten o'clock to-morrow morning.

Thursday A. M. December 1, 1791.

The convention met; absent Messrs. Johns, Holliday, White Mitchell, Batson, and Charles Polk.

On motion made and seconded,

That the President of this Convention be elected by ballot, the question was put and

Passed in the negative.

The Convention proceeded to the choice of a President, viva voce; and John Dickinton was duly elected.

James Booth was duly elected Secretary.

Thomas Wild was appointed door-keeper and messenger.

On motion, Resolved,

That a committee be appointed to prepare a draught of rules and regulations for conducting the business of the Convention.

The members appointed are Mr. Bassett, Mr. Roche, and Mr. Robinson.

Adjourned to three o'clock.

E O D E M D I E, P. M.

The committee appointed to prepare a draught of rules for conducting the business of the Convention, made their report, which was read.

On motion, Ordered, that the same be read a second time; which was done accordingly.

By special order the said rules were read the third time by paragraphs, and adopted as follows:

1. When the President assumes the chair, the members shall take their seats.

2. At the opening of the Convention each day, the minutes of the preceding day shall be read and may be corrected.

3. A motion made and seconded shall be repeated by the President. If the President, or any member requires it, a motion shall be reduced to writing. A motion made may be withdrawn, by the member who made it, before amendment or decision.

4. Every motion, either in the Convention or in a Committee of the whole, shall be entered on the journals, together with the names of the members making and seconding it.

5. No member speaking shall be interrupted, but by a call to order, by the President, or by a member through the President; nor shall any member speak to any one matter or thing above three times, without leave from the chair first had and obtained, except in a committee of the whole house.

6. No member shall be referred to by name in debate.

7. The President himself, or by request, may call to order any member who shall transgress the rules.

8. Every member attending the convention shall be in his place at the time to which the convention stands adjourned, or within half an hour of that time; and no member shall go out of the house during the sitting thereof, and continue thereout above the space of half an hour, without leave of the house first had and obtained.

9. The yeas and nays shall be called and entered on the minutes of the Convention, or of the committee of the whole, when any member requires it.

10. Questions of order, arising in the Convention or a committee of the whole, shall in the first instance, be determined from the chair, from which determination an appeal may be made on

on the requisition of any one member, to the Convention or committee; but no debate shall be had without such an appeal.

11. The rules of proceeding in the Convention shall, so far as they may be applicable, be observed in committee of the whole.

12. The journal of the committee of the whole shall be kept separate from that of the convention.

On motion of Mr. Clayton, seconded by Mr. Montgomery,

Ordered, That the resolutions of the General-Assembly, recommending to the people of this state, the calling of a Convention, be read: which was done accordingly.

On motion of Mr. Monro, seconded by Mr. Coram,

Ordered, That the present constitution of this state, be read: which was done accordingly.

On motion of Mr. Montgomery, seconded by Mr. Batson,

Resolved, That two thirds of the whole members, and not less of this Convention, shall be a quorum to transact business.

Adjourned to ten o'clock to-morrow morning.

Friday. A. M. December 2, 1791.

The Convention met: absent Messrs. Johns, White, Mitchell, Batson, and Charles Polk.

A motion was made by Mr. Batson, seconded by Mr. Ridgely, That a committee of nine persons be appointed to take into consideration, whether any, and what alterations and amendments are necessary to be made in the present Constitution of this State, and to report thereupon.

It was then moved by Mr. Roche, seconded by Mr. Haughey, That the last motion be postponed, in order to introduce the following:

That the house resolve itself into a committee of the whole, to consider, whether, and wherein the present constitution is defective.

On

On the question to postpone, the yeas and nays were required by Mr. Monro, and are as follow:

Y E A S.

Mr. Montgomery,
Mr. Armstrong,
Mr. Roche,
Mr. Johnston,
Mr. Haughey,
Mr. Monro,
Mr. Tatnall,
Mr. Coram,
Mr. Emmerfon,
Mr. Dill,
Mr. Collins.

N A Y S.

Mr. Ridgely,
Mr. Clayton,
Mr. Holliday,
Mr. Morris,
Mr. Sykes,
Mr. Bassett,
Mr. Melleston,
Mr. Cooper,
Mr. Robinson,
Mr. Shankland,
Mr. Beauchamp,
Mr. Moore,
Mr. Polk.

So it passed in the negative.

The original question being then put, was resolved in the affirmative.

The committee appointed are—The President, Mr. Montgomery, Mr. Roche, Mr. Rigely, Mr. Bassett, Mr. Clayton, Mr. Robinson, Mr. Shankland, and Mr. Cooper.

Adjourned to three o'clock.

E O D E M D I E, P. M.

On motion of Mr. Roche, seconded by Mr. Montgomery,

Resolved, That the Secretary be desired to lay on the table a copy of the constitution and laws of this state.

The Secretary accordingly laid on the table a copy of the constitution and laws of this state.

On motion of Mr. Montgomery, seconded by Mr. Sykes,

Resolved, That an addition of three members be made to the committee appointed to consider, whether any, and what alterations and amendments are necessary to be made in the present constitution of this State.

The additional members are, mr. Johns, mr. D. Polk, and mr. Sykes.

Adjourned to three o'clock on Monday next.

Monday, P. M. December 5, 1791.

The Convention met; absent messrs. White, Dill, Mollenston, Charles Polk, Collins, and Moore.

The Committee appointed to consider, whether any, and what alterations are necessary to be made in the present constitution of this state, reported progress, and desired leave to sit again.

A motion was then made by mr. Batson, seconded by mr. Mitchell,

That the house resolve itself into a committee of the whole to take into consideration, whether the constitution of this state requires amendments.

The said motion was afterwards amended to read as follows: That the special committee be dissolved; and that the house resolve itself into a committee of the whole, to take into consideration, whether the constitution of this state requires amendments. And the same being seconded by Mr. Monroe,

A division of the question was called for by mr. Clayton, seconded by mr. Bassett,

Whereupon the question, shall the special committee be dissolved? was put; and the yeas and nays being required by mr. Bassett, are as follow:

Y E A S.

Mr. Montgomery,
Mr. Armstrong,
Mr. Roche,
Mr. Johnston,
Mr. Haughey,
Mr. Monroe,
Mr. Tatnal,
Mr. Goram,
Mr. Johns,
Mr. Mitchell,
Mr. Batson.

D

N A Y S.

Mr. Ridgely,
Mr. Clayton,
Mr. Holliday,
Mr. Emerson,
Mr. Morris,
Mr. Sykes,
Mr. Bassett,
Mr. Cooper,
Mr. Robinson,
Mr. Shankland,
Mr. Beauchamp,
Mr. Daniel Polk,

So it passed in the negative.

A motion was made by mr. Ridgely,

That the latter part of the *afore said* motion be amended to read as follows :

That the convention resolve itself into a committee of the whole, for the special purpose of considering, whether the present constitution requires amendments; and thereupon to report general propositions only. And the same being seconded by mr. Batson,

It was moved by mr. Battett, seconded by mr. Ridgely,

That the words " to be referred to the special committee, for their instruction," be added to the motion made by mr. Ridgely,

Which was resolved in the affirmative ; and upon the question, the motion, as amended, was adopted, viz.

That the convention resolve itself into a committee of the whole for the special purpose of considering whether the present constitution requires amendments ; and thereupon to report general propositions only, to be referred to the special committee for their instruction.

On motion of mr. Batson, seconded by mr. Johns,

Resolved, That this convention will, to-morrow morning, resolve itself into a committee of the whole for the purpose *afore said*.

Adjourned to ten o'clock to-morrow morning.

Tuesday, A. M. December 6, 1791.

The convention met; absent messrs. White, Dill, Mollenston, Charles Polk, Collins, and Moore.

Agreeably to the order of the day, the convention resolved itself into a committee of the whole.

The

(13)
The president left the chair, and George Mitchell, Esq. as chairman, was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it,

The chairman reported, that the committee have made progress in the business referred to them, and desired leave to sit again in the afternoon.

Leave was accordingly granted.

Adjourned to three o'clock.

E O D E M D I E, P. M.

Mr. Dill and Mr. Molleston appeared in the house.

The convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported that the committee had made further progress in the business referred to them, and desired leave to sit again to-morrow morning.

Leave was accordingly granted.

Adjourned to ten o'clock to-morrow morning.

Wednesday, A. M. December 7, 1791.

The convention met; absent messrs. White, Charles Polk, and Moore.

On

On motion of mr. Mitchell, seconded by mr. Johns,

Resolved, That this convention will meet but once a day, and will continue to sit, either in convention or committee of the whole, from ten o'clock in the morning, till three in the afternoon, if the business may require it.

Agreeably to the order of the day, the convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again to-morrow.

Leave was accordingly granted.

Adjourned to ten o'clock to-morrow morning.

Thursday, A. M. December 8, 1791.

The convention met; absent messrs. Holliday, White and Moore.

Agreeably to the order of the day, the convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again to-morrow.

Leave was accordingly granted.

Adjourned

Adjourned to ten o'clock to-morrow morning.

Friday, A. M. December 9, 1791.

The convention met; absent messrs. Holliday, White and Moore.

Agreeably to the order of the day, the convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again to-morrow.

Leave was accordingly granted.

Adjourned to ten o'clock to-morrow morning.

Saturday, A. M. December 10, 1791.

The convention met; absent messrs. Holliday, White and Moore.

Agreeably to the order of the day, the convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then made the following report :

1. That the present constitution of this state requires amendment.

E.

2. That

2. That the *Declaration of Rights* should be amended in such manner, as more particularly to enumerate, and more precisely to define, the rights reserved out of the general powers of government, and to render it consistent with the constitution to be agreed upon.

3. That the legislative power of this state shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.

4. That the representatives shall be chosen annually, by the citizens residing in the several counties respectively.

5. That there shall be seven representatives chosen in each county, until a greater number of representatives shall by the general Assembly be judged necessary; and then, two thirds of each branch of the legislature concurring, they may by law make provision for increasing their number.

6. That the senators shall be chosen for _____ years, by electors, to be chosen by the citizens of the state having right to vote for representatives.

7. That the supreme executive power of this state shall be vested in a Governor.

8. That the executive power shall be kept distinct and separate from the legislative department.

9. That the Governor shall be chosen by the citizens of the State, having right to vote for representatives.

10. That the judicial power of this state shall be vested in a Supreme Court, and in a court of Common Pleas, with concurrent jurisdiction, the judges to hold their commissions during good behaviour; and in other courts to be so arranged that the advancement of justice in the earliest, speediest and best manner may be obtained.

Resolved, That the said report be referred to the special committee for their instruction.

On motion of Mr. Cooper, seconded by Mr. Batson,

Resolved, That Mr. Mitchell be of the special committee, vice Mr. Cooper.

Mr. Johns applied for leave of absence for a few days, which was refused.

Adjourned to four o'clock on Thursday next.

Thursday, December 15, 1791.

The convention met ; absent messrs. White, Collins, and Moore.

The Special committee made their report, which was read.

On motion of Mr. Bassett, seconded by Mr. Mitchell,

Resolved, That the said report be re-committed.

Mr. Ridgely applied for leave of absence for two days, which was refused.

Adjourned to four o'clock to-morrow.

Friday, December 16, 1791.

The convention met ; absent messrs. Ridgely and Moore.

The secretary having obtained leave of absence, Charles Nixon was elected assistant secretary.

The Special committee reported, that they had made some progress in the business referred to them, and requested leave to sit again to-morrow.

Leave was accordingly granted.

Adjourned to one o'clock to-morrow.

Saturday, P. M. December 17, 1791.

The convention met ; absent messrs. Ridgely and Moore.

The chairman of the Special committee presented their report, which was read as follows, viz,

WE

*"WE the people, hereby ordain and establish
this Constitution of government for the state
of Delaware:*

ARTICLE I.

SECTION 1.

GOD of his infinite goodness, so willing, all men are by birth free and equal, having united with their nature the rights of worshipping and serving their Creator according to the dictates of their consciences, of enjoying and defending life and liberty, of acquiring and protecting reputation and property, and in general of attaining objects suitable to their condition, without injury by one to another; and as these rights are essential to their welfare, for the due exercise thereof power is by the divine benevolence inherent in them: and therefore all just authority in the institutions of political society is derived from the people, and established with their consent, to advance their happiness. And they may for this end, as circumstances require, from time to time, alter their constitution of government.

2. It is the duty of all men frequently to assemble together for the public worship of the Author of the universe; and piety and morality, on which the prosperity of communities depends, are thereby promoted; but no man shall or ought to be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry, against his own free will and consent; and no power shall or ought to be vested in or assumed by any magistrates, that shall in any case interfere with, or in any manner controul the rights of conscience, nor a preference given by law to any religious societies, denominations, or modes of worship.

3. No religious test shall be required as a qualification to any office, or public trust under this state.

4. All elections shall be free and equal.

5. Trial by jury shall be as heretofore.

6. The press shall be free to every citizen who undertakes to examine the official conduct of men acting in a public capacity; and

and any citizen may print on any subject, being responsible for the abuse of that liberty. In prosecutions for publications investigating the proceedings of officers, or where the matter published is proper for public information; the truth thereof may be given in evidence; and in all indictments for libels, the jury may determine the facts, and the law, as in other cases.

7. The people shall be secure in their persons, houses, papers, and possessions, from unreasonable searches and seizures; and no warrant to search any place or to seize any person or things, shall issue, without describing them as particularly as may be; nor then, unless there be probable cause supported by oath or affirmation.

8. In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to be plainly and fully informed of the nature and cause of the accusation against him, to meet the witnesses in their examination face to face, to have compulsory process in due time on application by himself, his friends or counsel, for obtaining witnesses in his favor, and a speedy and public trial by an impartial jury: He shall not be compelled to give evidence against himself; nor shall he be deprived of life, liberty, or property, unless by the judgment of his peers, or the law of the land.

9. No person shall for any indictable offence be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; and no person shall be for the same offence twice put jeopardy of life or limb: nor shall any man's property be taken or applied to public use, without the consent of his representatives, and without compensation being made.

10. All courts shall be open; and every man for an injury done him in his reputation, person, moveable or immoveable possessions, shall have remedy by the due course of law, and justice administered according to the very right of the cause without sale, denial, or unreasonable delay or expense; and every action shall be tried in the county in which it shall be commenced, unless when the judges of the Supreme court or of the Common-pleas shall determine that an impartial trial of a cause cannot be had in that county. Suits may be brought against the state, according to such regulations as shall be made by law.

11. No power of suspending laws shall be exercised but by authority of the legislature.

F

12. Excessive

12. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted ; and in the construction of goals, a proper regard shall be had to the health of prisoners.

13. All prisoners shall be bailable by sufficient sureties, unless for capital offences when the proof is positive, or the presumption great ; and when persons are confined on accusations for such offences, their friends and counsel may at proper seasons have access to them.

14. The privilege of the writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require its suspension.

15. No commission of Oyer and Terminer or Gaol delivery shall be issued.

16. No attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate. The estates of those who destroy their own lives shall descend to, or vest as in case of natural death ; and if any person be killed by accident, no forfeiture shall be thereby incurred.

17. Though disobedience to laws by a part of the people upon suggestions of impolicy or injustice in them, tends by immediate effect and the influence of example, not only to subvert the public welfare and safety, but also in governments of a republican form, contravenes the social principles of such governments, founded on common consent for common good ; yet the citizens have a right in an orderly manner to meet together, and to apply to persons intrusted with the powers of government, for redress of grievances, or other proper purposes, by petition, remonstrance or address.

18. The right of the citizens to bear arms in defence of themselves, and the state, shall not be questioned.

19. No standing army shall be kept up without the consent of the Legislature ; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

20. No soldier shall in time of peace be quartered in any house without the consent of the owner ; nor in time of war, but by a civil magistrate in a manner to be prescribed by law.

21. No hereditary distinctions shall be granted, nor any office

office created or exercised, the appointment to which shall be for a longer term than during good behaviour; and no person holding any office under this state shall, without the consent thereof, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

WE DECLARE, that every thing in this article is reserved out of the general powers of government herein after mentioned.

A R T I C L E II.

Section 1. The legislative power of this state shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.

2. The representatives shall be chosen annually by the citizens residing in the several counties respectively, on the first Tuesday of October.

No person shall be a representative, who shall not have attained to the age of twenty-one years, and have in the county in which he shall be chosen, a freehold-estate in his own right of the value of one hundred pounds at least, or personal property of the value of two hundred pounds at least, and have been a citizen and inhabitant of the state three years next preceding the first meeting of the legislature after his election, and the last year of that term an inhabitant of the county in which he shall be chosen, unless he shall have been absent on the public business of the United States, or of this state.

There shall be seven representatives chosen in each county, until a greater number of representatives shall by the General Assembly be judged necessary; and then, two thirds of each branch of the Legislature concurring, they may by law make provision for increasing their number.

3. The senators shall be chosen in the following manner: All persons having right to vote for representatives in their several counties, shall on the first Tuesday of October, in the year one thousand seven hundred and ninety-two, elect nine persons for their respective counties (qualified as aforesaid, to be elected representatives) to be electors of the senate; which said electors shall meet on the first Tuesday in November next, at the town of Dover, and they, or any eighteen of them, shall proceed to elect by ballot out of the people at large, nine Senators, three of them residing

residing in each county, having the qualifications herein after required: And that the rotation of Senators herein prescribed, may be forever after kept up, all persons having right to vote for representatives shall at the same time when, and in the same manner as, they choose representatives, forever after annually elect three persons for their respective counties, qualified as aforesaid to be electors of the senate; which said electors, or any six of them, shall meet on the first Tuesday of November annually at the town of Dover, or such other place as shall be appointed by law, and shall elect by ballot from the people at large, one senator for each county, having the qualification herein after required. And if two or more persons shall have an equal number of ballots in their favour, by which the choice shall not be determined on the first ballot, then the electors shall again ballot before they separate, in which they shall be confined to the persons who on the first ballot had an equal number; and they who shall have the greatest number in their favour on the second ballot, shall be accordingly declared and returned duly elected; and if the whole number shall not thus be made up, because of an equal number of votes on the second ballot being still in favour of two or more persons, then the election shall be determined by lot between those who have such equal numbers.

The electors of the senate shall judge of the elections, returns, and qualifications of members of their body. The legislature may from time to time provide by law for completing the number of electors, in case of vacancies in that body.

The election of senators shall be made within four days after the day appointed for the electors to meet, and the return of such election shall be made to the senate.

No person shall be a Senator, who shall not have attained to the age of twenty-five years, and have in the county in which he shall be chosen, a freehold estate in his own right of the value of three hundred pounds at least, or personal property of the value of five hundred pounds at least, and have been a citizen and inhabitant of the state three years next preceding the first meeting of the Legislature after his election, and the last year of that term, an inhabitant of the county in which he shall be chosen, unless he shall have been absent on the public business of the United States, or of this state.

There shall be three senators chosen in each county. When a greater number of senators shall by the General Assembly be judged necessary, two thirds of each branch concurring, they may by law make provision for increasing their number; but the number of senators shall never be greater than one half, nor less

less than one third of the number of representatives.

Immediately after the Senators shall be elected in consequence of the first election, the Senators residing in each county shall be divided by lot into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at the expiration of the third year; so that one third may be chosen every year.

4. The General Assembly shall meet on the first Tuesday in January in every year; unless sooner convened by the Governor.

5. Each house shall choose its speaker and other officers; and also each house, whose speaker shall exercise the office of Governor, may choose a speaker pro tempore.

6. Each house shall judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business: but, a smaller number may adjourn from day to day, and shall be authorised to compel the attendance of absent members, in such manner and under such penalties as shall be deemed expedient.

7. Each house may determine the rules of its proceedings, punish any of its members for disorderly behaviour, and with the concurrence of two thirds, expel a member; and shall have all other powers necessary for a branch of the Legislature of a free and independent State.

8. Each house shall keep a journal of its proceedings, and publish them immediately after every session, except such parts as may require secrecy; and the yeas and nays of the members on any question, shall at the desire of any member be entered on the journal.

9. The doors of each house, and of committees of the whole, shall be open, unless when the business is such as ought to be kept secret.

10. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

11. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the

the treasury of the state : but no law varying the compensation shall take effect, till an election of representatives shall have intervened. They shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same ; and for any speech or debate in either house they shall not be questioned in any other place.

12 No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office under this state, which shall have been created, or the emoluments of which shall have been increased, during such time. No person concerned in any army or navy contract, no member of Congress, nor any person holding any office under this state or the United States, (except attorneys at law and officers in the militia) shall during his continuance in Congress, or in office, be a senator or representative.

13 When vacancies happen in either house, the speaker shall issue writs for election by the people, or by the electors, as the case may be ; and the persons thereupon chosen shall hold their seats as long as those in whose stead they are elected, might have done, if such vacancies had not happened.

14. All bills for raising revenue shall originate in the house of representatives : but the senate may propose alterations as on other bills ; and no bill, from the operation of which, when passed into a law, revenue may incidentally arise, shall be accounted a bill for raising revenue ; nor shall any matter or clause whatever, not immediately relating to, and necessary for raising revenue, be in any manner blended with, or annexed to, a bill for raising revenue.

15. No money shall be drawn from the treasury, but in consequence of appropriations made by law ; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

A R T I C L E III.

Section 1. The supreme executive powers of this state shall be vested in a Governor.

2. The Governor shall be chosen on the first Tuesday in October, by the citizens of the state having right to vote for Representatives, in the counties where they respectively reside,
at

at the places where they shall vote for Representatives.

The returns of every election for Governor shall be sealed up, and immediately delivered by the returning Officers of the several counties into the office of the clerk of the Senate, directed to the speaker of the Senate, who shall open and publish the same in the presence of the members of both Houses of the Legislature. The person having the highest number of votes shall be Governor: But, if two or more shall be equal in the highest number of votes, the members of the two Houses shall by joint ballot choose one of them to be Governor: and if upon such ballot, two or more of them shall still be equal and highest in votes, the speaker of the Senate shall have an additional casting vote.

Contested elections of a Governor shall be determined by a joint committee, consisting of one third of all the members of each House, to be selected by ballot of the Houses respectively: Every person of the committee shall take an oath or affirmation, that in determining the said election, he will faithfully discharge the trust reposed in him; and the committee shall always sit with open doors.

3. The Governor shall hold his office during three years from the third Tuesday in January next ensuing his election; and shall not be capable of holding it longer than six in any term of nine years.

4. He shall be at least thirty years of age, and have been a citizen and inhabitant of the United States twelve years next before the first meeting of the Legislature after his election, and the last six of that term an inhabitant of this state, unless he shall have been absent on the public business of the United States or of this state.

5. No member of Congress, or person holding any office under the United States or this state, shall exercise the office of Governor.

6. The governor shall at stated times receive for his services an adequate but moderate salary, to be fixed by law, which shall be neither increased or diminished, during the period for which he shall have been elected.

7. He shall be commander in chief of the army and navy of this state, and of the militia; except when they shall be called into the service of the United States.

8. He

8. He shall appoint all officers, whose offices are established by this constitution, or shall be established by law, and whose appointments are not herein otherwise provided for; but, no person shall be appointed to an office within a county, who shall not have a right to vote for representatives, and have been an inhabitant therein one year next before his appointment, nor hold the office longer than he continues to reside in the county. No member of Congress, nor person holding or exercising any office under the United States, shall at the same time hold or exercise the office of Judge, Treasurer, Attorney General, Secretary, Clerk of the Supreme Court, Prothonotary, Register for the Probate of Wills and granting Letters of Administration, Recorder, Sheriff, or any office under this state with a salary by law annexed to it, or any other office which the Legislature shall declare incompatible with offices or appointments under the United States. All commissions shall be in the name of the state, shall be sealed with the great seal, and signed and tested by the Governor.

9. He shall have power to remit fines and forfeitures, and to grant reprieves and pardons, except in cases of impeachment.

10. He may require information in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices.

11. He shall from time to time give to the General Assembly information of affairs concerning the state, and recommend to their consideration such measures as he shall judge expedient.

12. He may on extraordinary occasions convene the General Assembly, and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding three months.

13. He shall take care that the laws be faithfully executed.

14. On the death or resignation of the governor, or his removal from office on impeachment, or for inability, the speaker of the senate at that time shall exercise the office of governor, until a new governor shall be duly qualified; and on the death or resignation of the speaker of the senate, the speaker of the House of Representatives at that time shall exercise the office, until it be regularly vested in a new governor. If the trial of a contested election shall continue longer than until the third Tuesday in January next ensuing the election of a governor, the governor of the last year, or the speaker of the senate, or of the House of Representatives, who may then be in the exercise of the executive authority,

thority, shall continue therein until a determination of such contested election. The governor shall not be removed from his office for inability, but with the concurrence of two thirds of all the members of each house.

15. A secretary shall be appointed and commissioned during the governor's continuance in office, if he shall, so long behave himself well. He shall keep a fair register of all the official acts and proceedings of the governor; and shall, when required by either branch of the legislature, lay the same, and all papers, minutes, and vouchers relative thereto before them; and shall perform such other duties as shall be enjoined him by law. He shall have a compensation for his services to be fixed by law.

ARTICLE IV.

Section 1. All elections of governor, electors of senators, and representatives, shall be by ballot: and in such elections every white freeman of the age of twenty-one years, having resided in the state two years next before the election, and within that time paid a state or county tax, which shall have been assessed at least six months before the election, shall enjoy the right of an elector; and the sons of persons so qualified shall, between the ages of twenty-one and twenty two-years, be entitled to vote, although they shall not have paid taxes. The returning officers of all elections of governor, electors of senators, and representatives shall be chosen by the people.

2. Electors shall in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to, and returning from them.

ARTICLE V.

Section 1. The House of Representatives shall have the sole power of impeaching; but two thirds of all the members must concur in an impeachment. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to the evidence. No Person shall be convicted without the concurrence of two thirds of all the senators.

2. The governor, and all other civil officers under this state, shall be liable to impeachment for treason, bribery, or any high crime.

crime or misdemeanour in office. Judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit under this state; but the party convicted shall nevertheless be subject to indictment, trial, judgment, and punishment, according to law.

ARTICLE VI.

Section 1. The judicial power of this state shall be vested in a Supreme court, and courts of Oyer and Terminer and General Gaol delivery, in a court of Common Pleas, and in an Orphans court, Register's court, and a court of Quarter-Sessions of the Peace for each county, in Justices of the peace, and in such other courts as the legislature, two-thirds of all the members of each branch concurring, may from time to time establish.

2 The judges of the Supreme court and of Common-Pleas shall hold their offices during good behaviour: but for any reasonable cause, which shall not be a sufficient ground for an impeachment, the governor may remove any of them, on the address of two thirds of all the members of each branch of the legislature. They shall at stated times receive for their services adequate but moderate salaries to be fixed by law, which shall not be diminished during their continuance in office, and shall be payable quarterly to their respective orders upon the treasurer, out of any monies in the treasury; but they shall hold no other office of profit, nor receive any fees or perquisites, except such fees as shall be fixed by law for taking and certifying the acknowledgment of deeds, and other business to be done out of court.

3. The judges of the Supreme court shall be not fewer than three, nor more than four, one of whom shall be Chief-justice. There shall be a judge residing in each county. The jurisdiction of this court shall extend over the state. The judges shall, by virtue of their offices, be justices of Oyer and Terminer and General gaol delivery in the several counties. Any two of the judges may act as if all were present. This court shall have power to issue writs of error to the Common-Pleas, and to receive and determine appeals from interlocutory or final decrees of the chief-justice of the Common-Pleas in chancery. Errors and causes of appeal shall be assigned and exhibited in writing speedily, and citations duly served on adverse parties. And this court shall also receive and determine appeals from the Orphans court, and from the Register's court in controversies concerning the

the probate of wills and granting letters of administration. Upon the reversal of a judgment of the Common-Pleas, or of a decree of the chief-justice of that court in chancery, this court shall respectively render such judgment, or pass such decree, as the Common-Pleas, or the chief-justice of that court in chancery ought to have rendered or passed, except where a reversal is in favour of a plaintiff or petitioner in the original suit, and the damages to be assessed or the matters to be decreed, are uncertain; in any of which cases the cause shall be remanded, in order to a final decision.

4. The judges of the Common-Pleas shall be not fewer than six, nor more than seven, one of whom shall be chief-justice. There shall be two judges residing in each county. The jurisdiction of this court shall extend over the State. Any two of the judges may act as if all were present.

5. Any judge of the Supreme court or of the Common-Pleas shall issue the writ of Habeas Corpus in vacation-time and out of term, when duly applied for, which shall be immediately obeyed.

6. Any judge of the Supreme court or of the Common-Pleas may out of court take the acknowledgment of deeds; and the same being thereon certified, under his hand, such deeds shall be recorded.

7. In civil causes when pending, the Common-Pleas shall have the power, before judgment, of directing, upon such terms as they shall deem reasonable, amendments in pleadings and legal proceedings, so that by errors in any of them the determination of causes, according to their real merits, shall not be hindered; and also of directing the examination of witnesses that are aged, very infirm, or going out of the state, upon interrogatories *De bene Esse*, to be read in evidence in case of the death or departure of the witnesses before the trial, or inability by reason of age, sickness, bodily infirmity, or imprisonment, then to attend; and also the power of obtaining evidence from places not within the state.

8. One judge of the Supreme court or of the Common-Pleas may, if the other judges come not, open and adjourn the court, and may also make the necessary rules preparatory respectively to the trial or argument of causes.

9. At any time pending an action for debt or damages, the defendant may bring into court a sum of money for discharging the

the same and the costs then accrued, and the plaintiff not accepting thereof, it shall be delivered for his use to the clerk or prothonotary of the court; and if upon the final decision of the cause, the plaintiff shall not recover a greater sum than that so paid into court for him, he shall not recover any costs accruing after such payment

10. By the death of any party, no suit in chancery or at law, where the cause of action survives, shall abate; but suggestion of such death being entered of record, the executor or administrator of a deceased petitioner, or plaintiff, may prosecute the said suit; and if a respondent or defendant dies, the executor or administrator being duly served with a Scire Facias, thirty days before the return thereof, shall be considered as a party to the suit, in the same manner as if he had voluntarily made himself a party; and in any of those cases, the court shall pass a decree or render judgment for or against executors or administrators, as to right appertains. But where an executor or administrator of a deceased respondent or defendant becomes a party, the Court, upon motion, shall grant a continuance of the cause at least for one term, and not longer than three, as to the Judges shall appear proper.

11. No lands or tenements of a person deceased shall be sold upon a judgment against an executor or administrator, unless upon examination into the circumstances of the case, it shall appear to the judges, that the sum demanded is really and bona fide due and payable by the estate of the testator or intestate; and before sale, such approbation of the judges shall in vacation, or in term-time, be entered of record with the date thereof.

12. No lands or tenements shall be sold by a sheriff upon a judgment and execution, except in the case of mortgages or recognizances, unless it be found by a verdict of a jury of four persons, upon an inquisition held, that their clear yearly rents and profits, beyond all reprises, are not sufficient within seven years, to satisfy all debts and damages with costs of suit, recovered against the defendant, his heirs, executors, or administrators; upon which inquisition shall be endorsed a list of all debts and damages, and all the reprises, considered by the jury in finding their verdict.

No deed shall be executed by a sheriff to the purchaser of lands or tenements, unless the proceedings at the sale thereof shall be first approved by the court from which the execution issued.

13. Whenever

13. Whenever a person, not being an executor or administrator, appeals, or applies for a writ of error, a judge of the court from which the appeal is made, before an allowance of the appeal, or the clerk of the court from which the writ of error is to issue, before the issuing of the writ, shall respectively take sufficient security, that the appellant or plaintiff in error shall prosecute respectively his appeal or writ to effect, and pay the condemnation money and all costs, or otherwise abide the decree in appeal or judgment in error, if he fail to make his plea good.

14. No writ of error shall be brought upon any judgment heretofore confessed, entered, or rendered, but within five years, from this time; nor upon any judgment hereafter to be confessed, entered or rendered, but within five years after the confessing, entering or rendering thereof; unless the person entitled to such writ be an infant, feme-covert, non compos mentis, or a prisoner, and then within five years, exclusive of the time of such disability.

15. The chief-justice of the Common Pleas shall have the same power of holding courts of Chancery for the several counties, that the judges of the Common-Pleas, heretofore respectively had, and may direct the trial of material tracts by a jury in the Supreme court, but in no other court.

16. The judges of the Common Pleas, or any two of them, the chief justice being one, shall compose the Orphans court of each county, and may exercise the equity jurisdiction heretofore exercised by the Orphans Courts, except as to the adjusting and settling executors, administrators and guardians accounts; in which case they shall have an appellate jurisdiction from the sentence or decree of the register. This court may issue process throughout the state, to compel the attendance of witnesses.

17. An executor, administrator, or guardian, shall file every account with the register for the county, who shall as soon as conveniently may be, carefully examine the particulars with the proofs thereof, and settle the same in such manner as shall to him appear just, which account so settled shall remain in his office for inspection; and the executor, administrator, or guardian, shall give due notice in writing to all persons entitled to shares of the estate, or to their guardians respectively, if residing within the state, that the account is lodged in the said office, at least three months before the same is to be exhibited to the Orphans Court; upon which exhibition the judges of that court shall
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hear the exceptions of any persons concerned, if any be made and allow no demand whatever against the estate of the deceased, unless upon consideration of all circumstances, they shall be fully convinced, that the same is therewith justly chargeable. In cases where an infant, Feme-Covert, Non Compos Mentis, or a prisoner is interested, the same account shall be subject to the like revision at any time before the expiration of six months after the removal of the disability.

18. The registers of the several counties shall respectively hold the Register's court in each county. Upon the litigation of a cause, the depositions of the witnesses examined shall be taken at large in writing, and make part of the proceedings in the cause. This court may issue process throughout the state, to compel the attendance of witnesses.

19. The prothonotaries of the Common-Pleas may issue process as heretofore, take recognizances of bail, and sign confessions of judgment. No judgment in this court held for one county, shall bind lands or tenements in another, until a Testatum Fieri Facias being issued, shall be entered of record in the office of the Prothonotary of the county wherein the lands or tenements are situated.

20. The judges of the Common Pleas shall by virtue of their offices, be justices of Oyer and Terminer and General Gaol Delivery in each county for the trial of offences. The judges of the Common Pleas shall also by virtue of their offices, compose the courts of General Quarter Sessions of the Peace and Gaol Delivery within the several counties. Any two of the said judges shall be a quorum.

21. The Governor shall appoint a competent number of persons to the office of Justice of the Peace, not exceeding twelve in each county, until two thirds of both houses of the Legislature shall by law direct an addition to the number, who shall be commissioned for seven years, if so long they shall behave themselves well; but may be removed by the Governor within that time, on conviction or misbehaviour in office, or on the address of both Houses of the Legislature.

22. The style in all process and public acts shall be THE STATE OF DELAWARE. Prosecutions shall be carried on in the name of the state, and shall conclude *against the Peace and Dignity of the State.*

A R T I C L E

A R T I C L E VII.

Section 1. The citizens in each hundred having right to vote for representatives, shall on the second Tuesday in September annually, choose three reputable and judicious persons residing therein, to be assessors for that hundred, whose duty it shall be to make accurate lists of all the rateable persons and estates in the hundred, therein ascertaining with diligent and due enquiry, as exactly as they possibly can, the true value of such property real and personal, and the rate which upon consideration of all circumstances, they in their consciences believe every individual ought to pay.

The citizens having right to vote for representatives, shall in every county, at the same time and places when, and where they vote for representatives, and in the same manner, choose three commissioners, to whom shall be added for each county four more, two to be appointed by the judges of the Supreme Court, and two by the judges of the Common-Pleas, in the first week of in every year. Those seven persons shall be styled commissioners of taxes, and shall compose the Levy court of each county. They shall hold their offices for three years, if so long they behave themselves well. Any four may act as if all were present. Vacancies in this body shall be supplied by new elections of the citizens, or new appointments by the judges of the Supreme Court or of the Common-Pleas respectively, as the commissioners whose seats are vacated, were severally chosen or appointed. The Commissioners for each county shall meet together on the Tuesday in annually, at the places where the court of Common Pleas is usually held; and then and there the assessors shall attend, make return of the lists before mentioned, signed and approved by the three assessors of each hundred, or by any two of them, to the commissioners, and give them the best information in their power, concerning the circumstances of the persons and the property mentioned in their several lists. Upon this, and such other information as the commissioners shall be able to obtain, for which purpose they shall use all lawful ways and means, they shall proceed to calculate and settle the public debts and charges of the county, allowing just demands which now are or hereafter shall be chargeable thereon; and shall adjust the sums of money which ought of necessity to be raised yearly, to defray the expenses of building and repairing court-houses, prisons, poor-houses, and other charges for promoting the service and benefit of the county, appropriating and setting down in writing among their

their proceedings, the sum of money to be applied to each use or purpose, together with such sums as may be needful for making good deficiencies, and for enforcing collection; and then having due regard to all circumstances, make equal and just assessments of all rateable persons and estates in the county, of which copies shall be published in each hundred, and notice given of the days and places when and where the court of appeals will be held, as the legislature shall direct; at which days and places the commissioners shall attend, hear complaints, redress grievances, and rectify errors, if any there be. The commissioners shall appoint a competent number of collectors in each county, who shall give good security in a manner to be prescribed by law, for the discharge of their duties. The collectors shall forthwith pay all taxes as they receive them, to the county treasurer, who shall every pay them over to the state treasurer.

Other necessary provisions respecting the commissioners; the Levy courts, courts of Appeal, and collectors, conformably to this constitution may be made by the legislature.

2. The members of the senate and house of representatives, and the judges of the Supreme court, and the Common-Pleas, shall by virtue of their offices, be conservators of the peace throughout the state; and the treasurer, attorney-general, secretary, clerks of the Supreme court, prothonotaries, registers, recorders, sheriffs, and coroners, shall by virtue of their offices, be conservators thereof within the counties respectively in which they reside.

3. Provision respecting the militia shall be made by law, conformably to the constitution of the United States.

4. The representative, and when there shall be more than one, the representatives of the people of this state in congress, shall be voted for at the same places where representatives in the state legislature are voted for, and in the same manner.

5. The state treasurer shall be appointed annually by the joint ballot of both houses.

6. Two persons for the office of sheriff, and two for the office of coroner, shall be chosen by the citizens residing in each county, and having right to vote for representatives, at the same time and places of election of representatives, one of whom for each office

office respectively, shall be appointed by the governor. They shall hold their offices for three years, if so long they shall behave themselves well, and until successors be duly qualified; but no person shall be twice chosen or appointed sheriff in any term of six Years. The Governor shall fill vacancies in these offices by new appointments to continue unto the next general election, and until successors shall be chosen and duly qualified. Every sheriff shall keep a regular statement and account of all monies received by him as sheriff, and of the application thereof, and of all fees becoming due to him; and within three months after the expiration of his office, shall deposit the book containing the same, or a true duplicate thereof among the records of the Prothonotary's office, there to remain for inspection under such penalties for default as shall be prescribed by the Legislature; and in like manner shall return a statement and account of all monies received and applied, and fees becoming due upon sales made by him after the expiration of his office, within three months after every such sale. The Legislature may when it shall be judged expedient, vary the appointment of sheriffs in the governor; but no person shall be twice appointed sheriff in any term of six Years.

7. The attorney-general, clerks of the Supreme Court, prothonotaries, registers, clerks of the Orphans Courts; and of the peace, shall respectively be commissioned for five years if so long they shall behave themselves well. Prothonotaries, clerks of the Supreme Court, of the Orphans Courts; registers, recorders, and sheriffs, shall keep their offices in the town or place in each county, in which the Supreme Court and the court of Common-Pleas are usually held.

8. All inferior officers in the treasury department, attorneys at law, election officers, officers relating to taxes, to the poor, and to highways, constables, and hundred officers, shall be appointed in such manner as is or may be directed by law.

9. All salaries and fees annexed to offices shall be moderate; and no officer shall receive any fees whatever, without giving to the person who pays, a receipt for them, if required, therein specifying every particular and the charge for it.

10. The fees to officers in every action of debt or on the case upon an Indebitatus Assumpsit, wherein the money recovered shall not amount to more than the value of sixty dollars, shall be only half of what they are or shall be in other actions.

11. No costs shall be paid by a person accused, on a bill being

ing returned ignoramus; nor on acquittal by a Jury, unless a majority of the judges present at the trial certify, that there was probable cause for the prosecution.

12. The rights, privileges, immunities, and estates of religious societies and corporate bodies, shall remain as if the constitution of this state had not been altered. And no clergyman or preacher of the gospel, of any denomination, shall be capable of holding any civil office in this state, or of being a member of either branch of the legislature while he continues in the exercise of the pastoral or clerical functions.

13. All the laws of this state, existing at the time of making this constitution, and not inconsistent with it, shall remain in force, unless they shall be altered by future laws: and all actions and prosecutions now pending, shall proceed as if this constitution had not been made.

14. This constitution shall be prefixed to every edition of the laws made by direction of the legislature.

15. The legislature shall, as soon as conveniently may be, provide by law, for ascertaining what statutes and parts of statutes, shall continue to be in force within this state; for reducing them, and all acts of the General-Assembly, into such order, and publishing them in such manner, that thereby the knowledge of them may be generally diffused; for choosing inspectors and judges of elections, and regulating the same in such manner, as shall most effectually guard the rights of the citizens entitled to vote; for better securing personal liberty, and easily and speedily redressing all wrongful restraints thereof; for more certainly obtaining returns of impartial juries; for dividing lands and tenements in sales by sheriffs, where they will bear a division, into as many parcels as may be without spoiling the whole, and for advertising and making the sales in such manner, and at such times, and places, as may render them most beneficial to all persons concerned; and for establishing schools, and promoting arts and sciences in one or more seminaries of learning.

A R T I C L E VIII.

Section 1. Members of the General-Assembly, and all officers executive and judicial, shall be bound by oath or affirmation, to support the constitution of this state, and to perform the duties of their respective offices with fidelity.

Ordered

Ordered, that the assistant secretary procure ten copies of the foregoing report.

Adjourned to ten o'clock on Monday next.

Monday, A. M. December 19, 1791.

The convention met ; absent Mr. Moore.

The convention resolved itself into a committee of the whole, to take into consideration the plan of government, reported by the Special committee on Saturday last.

The chairman left the chair, and Thomas Montgomery, as chairman, was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made some progress in the business referred to them, and desired leave to sit again to-morrow.

Leave was accordingly granted.

Adjourned to ten o'clock to-morrow.

Tuesday A. M. December, 20, 1791.

The convention met ; absent Mr. Moore.

The convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed herein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further

further progress in the business referred to them, and desired leave to sit again in the afternoon.

Leave was accordingly granted.

Adjourned to four o'clock.

E O D E M D I E, P. M.

The convention met, and resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again to-morrow.

Leave was accordingly granted.

Adjourned to ten o'clock to-morrow morning.

Wednesday, A. M. December 21, 1791.

The convention met ; absent Mr. Moore.

The convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again in the afternoon.

Leave

Leave was accordingly granted.

Adjourned to four o'clock.

E O D E M D I E, P. M.

The convention met, and resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again to-morrow.

Leave was accordingly granted.

Adjourned to ten o'clock to-morrow.

Thursday, A. M. December 22, 1791.

The convention met; absent Mr. Moore.

The convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again in the afternoon.

Leave

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again to-morrow.

Leave was accordingly granted.

Adjourned to ten o'clock to-morrow.

Friday, A. M. December 23, 1791.

The convention met; absent Mr. Moore.

The assistant secretary presented ten copies of the report of the special committee, agreeably to the order of the convention on Saturday last.

On motion, Resolved,

That an Order be now drawn on the State Treasurer, and signed by the President, in favor of the assistant secretary, for fifteen pounds in discharge thereof.

Which order was drawn and signed accordingly.

Agreeably to the Order of the day, the convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again in the afternoon.

Leave was accordingly granted.

Adjourned to four o'clock.

EODEM

E O D E M D I E, P. M.

The convention met, and resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them; and desired leave to sit again to-morrow.

Leave was accordingly granted.

Adjourned to ten o'clock to-morrow.

Saturday, A. M. *December 24, 1791.*

The convention met; absent Messrs. Sykes, Batson, Shankland, Polk, Collins and Moore.

The Secretary now attended, and resumed the duties of that office. Charles Nixon was continued assistant secretary.

Agreeably to the Order of the day, the convention resolved it self into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again in the afternoon.

Leave was accordingly granted.

M

Adjourned.

Adjourned to three o'clock.

E O D E M D I E, P. M.

Agreeably to Order, the convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again on Monday morning.

Leave was accordingly granted.

Adjourned to ten o'clock on Monday morning.

Monday, A. M. December 26, 1791.

The convention met ; absent Messrs. White, Sykes, Batson, Shankland, Collins and Moore.

Agreeably to the Order of the day, the convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported that the committee had made further progress in the business referred to them, and desired leave to sit again in the afternoon.

Leave was accordingly granted.

Adjourned

Adjourned to four o'clock.

E O D E M D I E, P. M.

Agreeably to Order, the convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress, in the business referred to them, and desired leave to sit again to-morrow morning.

Leave was accordingly granted.

Adjourned to ten o'clock to-morrow morning.

Tuesday, A. M. December 27, 1791.

The convention met; absent Messrs. White, Sykes, Collins and Moore.

Agreeably to the Order of the day, the convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again in the afternoon.

Leave was accordingly granted.

Adjourned

Adjourned to four o'clock.

EXODIE, P. M.

A motion was made by Mr. Ridgely, seconded by Mr. Morris, in the following words:

Whereas the deputies to this convention were appointed for the sole purpose of revising and amending the old constitution, or making a new one for the state,

Therefore Resolved,

That the sense of this convention be taken, whether they will proceed in the business of legislation, or not.

It was then moved by Mr. Ridgely, seconded by Mr. Batson, that the last motion be referred to the committee of the whole, which was determined in the affirmative.

Agreeably to Order, the convention then resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave sit again to-morrow morning.

Leave was accordingly granted.

Adjourned to ten o'clock to-morrow morning.

Wednesday, A. M. December 28, 1791.

The convention met; absent Messrs. White, Sykes, Robinson, and Moore.

Agreeably to the Order of the day, the convention resolved itself into a committee of the whole.

The

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again in the afternoon.

Leave was accordingly granted.

Adjourned to three o'clock.

E O D E M D I E, P. M.

Agreeably to Order, the convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again to-morrow morning.

Leave was accordingly granted.

Adjourned to ten o'clock to-morrow morning.

Thursday, A. M. December 29, 1791.

The convention met; absent Messrs. White, Sykes, Robinson and Moore.

Agreeably to the Order of the day, the convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again in the afternoon.

Leave was accordingly granted.

Adjourned to four o'clock.

E O D E M D I E, P. M.

Agreeably to order, the convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again to-morrow morning.

Leave was accordingly granted.

Adjourned to ten o'clock to-morrow morning.

Friday, A. M. December 30, 1791

The convention met; absent Messrs. White, Sykes, Robinson, and Moore.

The convention resolved itself into a committee of the whole.

The

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again in the afternoon.

Leave was accordingly granted.

Adjourned to four o'clock.

E O D E M D I E, P. M.

Agreeably to Order, the convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again to-morrow morning.

Leave was accordingly granted.

Adjourned to ten o'clock to-morrow morning.

Saturday, A. M. December 31, 1791.

The convention met; absent Messrs. White, Sykes, Robinson, Moore, and Daniel Polk.

Agreeably to the Order of the day, the convention resolved itself into a committee of the whole.

The

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee had made further progress in the business referred to them, and desired leave to sit again in the afternoon.

Leave was accordingly granted.

Adjourned to four o'clock.

E O D E M D I E, P. M.

Agreeably to Order, the convention resolved itself into a committee of the whole.

The president left the chair, and the chairman was placed therein.

After some time spent in the business before the committee,

The chairman left the chair, and the president resumed it.

The chairman then reported, that the committee of the whole, to whom was referred the Report of the Special Committee, had agreed to the following Draught of a Constitution of Government, which was presented to the chair, and read as follows, viz.

*WE the people, hereby ordain and establish
this Constitution of government for the state
of Delaware :*

GOD, of his infinite goodness, so willing, all men have united with their nature, the rights of worshipping and serving their Creator according to the dictates of their consciences, of enjoying and defending life and liberty, of acquiring and protecting reputation and property, and in general of attaining objects
suitable

suitable to their condition, without injury by one to another; and as these rights are essential to their welfare, for the due exercise thereof, power is by the divine benevolence inherent in them; and therefore all just authority in the institutions of political society is derived from the people, and established with their consent, to advance their happiness: and they may for this end, as circumstances require, from time to time alter their constitutions of government.

A R T I C L E I.

Section 1. It is the duty of all men frequently to assemble together for the public worship of the Author of the universe; and piety and morality, on which the prosperity of communities depends, are thereby promoted; but no man shall or ought to be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry against his own free will and consent, and no power shall or ought to be vested in or assumed by any magistrate, that shall in any case interfere with, or in any manner controul the rights of conscience, nor a preference given by law to any religious societies, denominations, or modes of worship.

2. No religious test shall be required as a qualification to any office, or public trust under this state.

3. All elections shall be free and equal.

4. Trial by jury shall be as heretofore.

5. The press shall be free to every citizen who undertakes to examine the official conduct of men acting in a public capacity; and any citizen may print on any subject, being responsible for the abuse of that liberty. In prosecutions for publications, investigating the proceedings of officers, or where the matter published is proper for public information, the truth thereof may be given in evidence: and in all indictments for libels, the jury may determine the facts and the law.

6. The people shall be secure in their persons, houses, papers, and possessions, from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or things, shall issue, without describing them as particularly as may be;
nor

nor then, unless there be probable cause supported by oath or affirmation.

7. In all criminal prosecutions, the accused hath a right to be heard by himself and his counsel, to be plainly and fully informed of the nature and cause of the accusation against him, to meet the witnesses in their examination face to face, to have compulsory process in due time, on application by himself, his friends or counsel, for obtaining witnesses in his favor, and a speedy and public trial by an impartial jury: He shall not be compelled to give evidence against himself; nor shall be deprived of life, liberty, or property, unless by the judgment of his peers or the law of the land.

8. No person shall for any indictable offence be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger, and no person shall be for the same offence twice put in jeopardy of life or limb; nor shall any man's property be taken or applied to public use, without the consent of his representatives, and without compensation being made.

9. All courts shall be open; and every man for an injury done him in his reputation, person, moveable or immovable possessions, shall have remedy by the due course of law, and justice administered according to the very right of the cause, and the law of the land, without sale, denial, or unreasonable delay or expence; and every action shall be tried in the county in which it shall be commenced, unless when the judges of the court in which the cause is to be tried, shall determine that an impartial trial thereof cannot be had in that county. Suits may be brought against the state, according to such regulations as shall be made by law.

10. No power of suspending laws shall be exercised, but by authority of the legislature.

11. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted: and in the construction of gaols, a proper regard shall be had to the health of prisoners.

12. All prisoners shall be bailable by sufficient sureties, unless for capital offences when the proof is positive or the presumption great; and when persons are confined on accusation for such offences,

fences, their friends and counsel may at proper seasons have access to them.

13. The privilege of the writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

14. No commission of Oyer and Terminer or Goal-delivery shall be issued.

15. No attainder shall work corruption of blood, nor except during the life of the offender, forfeiture of estate. The estates of those who destroy their own lives shall descend to or vest as in case of natural death; and if any person be killed by accident, no forfeiture shall be thereby incurred.

16. Though disobedience to laws by a part of the people, upon suggestions of impolicy or injustice in them, tends by immediate effect and the influence of example, not only to subvert the public welfare and safety, but also in governments of a republican form, contravenes the social principles of such governments, founded on common consent for common good; yet the citizens have a right in an orderly manner to meet together, and to apply to persons intrusted with the powers of government, for redress of grievances or other proper purposes, by petition, remonstrance, or address.

17. No standing army shall be kept up without the consent of the legislature; and the military shall, in all cases and at all times, be in strict subordination to the civil power.

18. No soldier shall in time of peace be quartered in any house, without the consent of the owner; nor in time of war, but by a civil magistrate, in a manner to be prescribed by law.

19. No hereditary distinction shall be granted, nor any office created or exercised, the appointment to which shall be for a longer term than during good behaviour; and no person holding any office under this state, shall without the consent thereof, accept of any present, emolument, office or title of any kind whatever, from any king, prince, or foreign state.

WE DECLARE, that every thing in this article is reserved out of the general powers of government herein after mentioned.

A R T I C L E. II.

Section 1. The legislative power of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives,

2. The representatives shall be chosen annually by the citizens residing in the several counties respectively, on the first Tuesday of October.

No person shall be a representative, who shall not have attained to the age of twenty one years, and have a freehold in the county in which he shall be chosen, or personal property of the value of two hundred pounds at least, and paid a state or county tax, have been a citizen and inhabitant of the state three years next preceding the first meeting of the legislature after his election, and the last year of that term an inhabitant of the county in which he shall be chosen, unless he shall have been absent on the public business of the United States or of this State.

There shall be seven representatives chosen in each county, until a greater number of representatives shall by the General Assembly be judged necessary; and then, two thirds of each branch of the legislature concurring, they may by law make provision for increasing their number.

3. The senators shall be chosen for three years by the citizens residing in the several counties respectively, having right to vote for representatives, at the same time when they shall vote for representatives, in the same manner, and at the same places.

No person shall be a Senator who shall not have attained to the age of twenty-five years, and have in the county in which he shall be chosen, a freehold estate in two hundred acres of land, or an estate in real and personal property, or in either, of the value of one thousand pounds at least, and have been a citizen and inhabitant of the state three years next preceding the first meeting of the legislature after his election, and the last year of that term an inhabitant of the county in which he shall be chosen unless he shall have been absent on the public business of the United States or of this state.

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There shall be three senators chosen in each country. When a greater number of senators shall by the General Assembly be judged necessary; two thirds of each branch concurring, they may by law make provision for increasing their number; but the number of senators shall never be greater than one half nor less than one third of the number of representatives.

Immediately after the senators shall be elected in consequence of the first election, the senators residing in each country shall be divided by lot into three classes. The seats of the senators of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at the expiration of the third year; so that one third may be chosen every year.

4. The General Assembly shall meet on the first Tuesday in January in every year, unless sooner convened by the governor.

5. Each house shall choose its speaker and other officers; and also each house, whose speaker shall exercise the office of governor, may choose a speaker pro tempore.

6. Each House shall judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business: but a smaller number may adjourn from day to day, and shall be authorized to compel the attendance of absent members, in such manner and under such penalties as shall be deemed expedient.

7. Each house may determine the rules of its proceedings, punish any of its members for disorderly behaviour, and with the concurrence of two thirds expel a member; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

8. Each house shall keep a journal of its proceedings, and publish them immediately after every session, except such parts as may require secrecy; and the yeas and nays of the members on any question, shall at the desire of any member, be entered on the journal.

9. The doors of each house, and of committees of the whole, shall be open, unless when the business is such as ought to be kept secret.

10. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

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11. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the state: but, no law varying the compensation shall take effect, till an election of representatives shall have intervened. They shall in all cases, except Treason, Felony, or Breach of the Peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

12. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office under this state, which shall have been created, or the emoluments of which shall have been increased during such time. No person concerned in any army or navy contract, no member of congress, nor any person holding any office under this state, or the United States, except attorneys at law and officers in the militia, shall during his continuance in congress or in office, be a senator or representative.

13. When vacancies happen in either house, writs of election shall be issued by the Speakers respectively, or in cases of necessity in such other manner as shall be provided for by law; and the persons thereupon chosen shall hold their seats as long as those in whose stead they are elected might have done, if such vacancies had not happened.

14. All bills for raising revenue shall originate in the house of representatives; but, the senate may propose alterations as on other bills; and no bill, from the operation of which, when passed into a law, revenue may incidently arise, shall be accounted a bill for raising revenue; nor shall any matter or clause whatever, not immediately relating to and necessary for raising revenue, be in any manner blended with, or annexed to, a bill for raising revenue.

15. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published annually.

ARTICLE

ARTICLE III.

Section 1. The supreme executive powers of this state shall be vested in a Governor.

2. The governor shall be chosen on the first Tuesday in October, by the citizens of the state having right to vote for representatives, in the counties where they respectively reside, at the places where they shall vote for representatives.

The returns of every election for governor shall be sealed up, and immediately delivered by the returning officers of the several counties to the speaker of the senate, or in case of his death, to the speaker of the house of representatives, who shall keep the same until a speaker of the senate shall be appointed, to whom they shall be immediately delivered after his appointment, who shall open and publish the same in the presence of the members of both houses of the legislature. The person having the highest number of votes shall be governor: but if two or more shall be equal in the highest number of votes, the members of the two houses shall by joint ballot choose one of them to be governor; and if upon such ballot, two or more of them shall still be equal and highest in votes, the speaker of the senate shall have an additional casting vote.

Contested Elections of a Governor shall be determined by a joint committee, consisting of one third of all the members of each house, to be selected by ballot of the houses respectively: every person of the committee shall take an oath or affirmation, that in determining the said election, he will faithfully discharge the trust reposed in him; and the committee shall always sit with open doors.

3. The Governor shall hold his office during three years from the third Tuesday in January next ensuing his election; and shall not be capable of holding it longer than six in any term of nine years.

4. He shall be at least thirty years of age, and have been a citizen and inhabitant of the United States twelve years next before the first meeting of the Legislature after his election, and the last six of that term an inhabitant of this state, unless he shall have been absent on the public business of the United States or of this state.

5. No

5. No member of Congress or person holding any office under the United States, or this state, shall exercise the office of Governor.

6. The governor shall at stated times receive for his services an adequate but moderate salary, to be fixed by law, which shall be neither increased nor diminished during the period for which he shall have been elected.

7. He shall be commander in chief of the army and navy of this state, and of the militia; except when they shall be called into the service of the United States.

8. He shall appoint all officers, whose offices are established by this constitution or shall be established by law, and whose appointments are not herein otherwise provided for; but, no person shall be appointed to an office within a county, who shall not have a right to vote for representatives, and have been an inhabitant therein one year next before his appointment, nor hold the office longer than he continues to reside in the county. No member of Congress, nor person holding or exercising any office under the United States, shall at the same time hold or exercise the office of Judge, Treasurer, Attorney General, Secretary, Clerk of the Supreme Court, Prothonotary, Register for the probate of wills and granting letters of Administration, Recorder, Sheriff, or any office under this state with a salary by law annexed to it, or any other office which the Legislature shall declare incompatible with offices or appointments under the United States. All commissions shall be in the name of the state, shall be sealed with the great seal, and be signed and tested by the governor.

9. He shall have power to remit fines and forfeitures; and to grant reprieves and pardons, except in cases of impeachment.

10. He may require information in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices.

11. He shall from time to time give to the General-Assembly information of affairs concerning the state, and recommend to their consideration such measures as he shall judge expedient.

12. He may on extraordinary occasions convene the General-Assembly, and in case of disagreement between the two houses with

with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding three months.

13. He shall take care that the laws be faithfully executed.

14. On the death or resignation of the governor, or his removal from office on impeachment, or for inability, the speaker of the senate at that time shall exercise the office of governor, until a new governor shall be duly qualified; and on the death or resignation of the speaker of the senate, the speaker of the house of representatives at that time shall exercise the office, until it be regularly vested in a new governor. If the trial of a contested election shall continue longer than until the third Tuesday in January next ensuing the election of a governor, the governor of the last year, or the speaker of the senate, or of the house of representatives, who may then be in the exercise of the executive authority, shall continue therein until a determination of such contested election. The governor shall not be removed from his office for inability, but with the concurrence of two thirds of all the members of each house.

15. A secretary shall be appointed and commissioned during the governor's continuance in office, if he shall so long behave himself well. He shall keep a fair register of all the official acts and proceedings of the governor; and shall, when required by either branch of the legislature, lay the same, and all papers, minutes, and vouchers relative thereto before them; and shall perform such other duties as shall be enjoined him by law. He shall have a compensation for his services to be fixed by law.

ARTICLE IV.

Section 1. All elections of governor, senators, and representatives, shall be by ballot: and in such elections every white freeman of the age of twenty-one years, having resided in the state two years next before the election, and within that time paid a state or county tax, which shall have been assessed at least six months before the election, shall enjoy the right of an elector; and the sons of persons so qualified shall, between the ages of twenty-one and twenty two-years, be entitled to vote, although they shall not have paid taxes. The returning officers of all elections of governor, senators, and representatives shall be chosen by the people.

2. Electors shall in all cases except treason, felony, or breach
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of the peace, be privileged from arrest during their attendance at elections, and in going to, and returning from them.

ARTICLE V.

Section 1. The House of Representatives shall have the sole power of impeaching; but two thirds of all the members must concur in an impeachment. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to the evidence. No Person shall be convicted without the concurrence of two thirds of all the senators.

2. The governor, and all other civil officers under this state, shall be liable to impeachment for treason, bribery, or any high crime or misdemeanour in office. Judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit under this state; but the party convicted shall nevertheless be subject to indictment, trial, judgment, and punishment, according to law.

3. Treason against this state shall consist only in levying War against it, or in adhering to the enemies of the government, giving them aid and comfort. No person shall be convicted of Treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

ARTICLE VI.

Section 1. The judicial power of this state shall be vested in a Supreme court, and courts of Oyer and Terminer and General Gaol delivery, in a court of Common Pleas, and in an Orphans court, Register's court, and a court of Quarter-Sessions of the Peace for each county, in Justices of the peace, and in such other courts as the legislature, two-thirds of all the members of each branch concurring, may from time to time establish.

2 The judges of the Supreme court and of the Common-Pleas shall hold their offices during good behaviour: but for any reasonable cause, which shall not be a sufficient ground for an impeachment, the governor may in his discretion remove any of them, on the address of two thirds of all the members of each branch of the legislature. They shall at stated times receive for their services adequate but moderate salaries to be fixed by law,

law, which shall not be diminished during their continuance in office, and shall be payable quarterly to their respective orders upon the treasurer, out of any monies in the treasury; but they shall hold no other office of profit, nor receive any fees or perquisites, except such fees as shall be fixed by law for business to be done out of court.

3. The judges of the Supreme court shall be not fewer than three, nor more than four, one of whom shall be Chief-justice. There shall be a judge residing in each county. The jurisdiction of this court shall extend over the state. The judges shall, by virtue of their offices, be justices of Oyer and Terminer and General gaol delivery in the several counties. Any two of the judges may act as if all were present.

4. The judges of the Common-Pleas shall be not fewer than three nor more than four, one of whom shall be chief-justice. There shall be a judge residing in each county. The jurisdiction of this court shall extend over the State. Any two of the judges may act as if all were present.

5. Any judge of the Supreme court or of the Common-Pleas shall issue the writ of Habeas Corpus in vacation-time and out of term, when duly applied for, which shall be immediately obeyed.

6. Any judge of the Supreme court or of the Common-Pleas may, unless the legislature shall otherwise provide by law, out of court take the acknowledgment of deeds; and the same being thereon certified, under his hand, such deeds shall be recorded, and have the same effect as if acknowledged in open court.

7. In civil causes when pending, the Supreme Court and Common-Pleas shall have the power, before judgment, of directing, upon such terms as they shall deem reasonable, amendments in pleadings and legal proceedings, so that by error in any of them the determination of causes, according to their real merits, shall not be hindered; and also of directing the examination of witnesses that are aged, very infirm, or going out of the state, upon interrogatories *De bene Esse*, to be read in evidence in case of the death or departure of the witnesses before the trial, or inability by reason of age, sickness, bodily infirmity, or imprisonment, then to attend; and also the power of obtaining evidence from places not within the state.

8. Suits may originate in the Supreme Court or Common Pleas.

9. One

9. One judge of the Supreme court or of the Common-Pleas may, if the other judges come not, open and adjourn the court, and may also make the necessary rules preparatory respectively to the trial or argument of causes.

10. At any time pending an action for debt or damages, the defendant may bring into court a sum of money for discharging the same and the costs then accrued, and the plaintiff not accepting thereof, it shall be delivered for his use to the clerk or prothonotary of the court; and if upon the final decision of the cause, the plaintiff shall not recover a greater sum than that so paid into court for him, he shall not recover any costs accruing after such payment, except where the plaintiff is an executor or administrator.

11. By the death of any party, no suit in chancery or at law, where the cause of action survives, shall abate; but until the legislature shall otherwise provide, suggestion of such death being entered of record, the executor or administrator of a deceased petitioner, or plaintiff, may prosecute the said suit; and if a respondent or defendant dies, the executor or administrator being duly served with a Scire Facias, thirty days before the return thereof, shall be considered as a party to the suit; in the same manner as if he had voluntarily made himself a party; and in any of those cases, the court shall pass a decree or render judgment for or against executors or administrators, as to right appertains. But where an executor or administrator of a deceased respondent or defendant becomes a party, the Court, upon motion, shall grant such a continuance of the cause as to the Judges shall appear proper.

12. No lands or tenements shall be sold by a sheriff upon a judgment and execution, except in the case of mortgages or recognizances, unless it be found upon an inquisition held by the valuation of four judicious and substantial freeholders, upon their oaths or affirmations, and under their hands and seals, that their clear yearly rents and profits, beyond all reprises, are not sufficient within seven years, to satisfy all debts and damages with costs of suits, recovered against the defendant, his heirs, executors, or administrators; upon which inquisition shall be endorsed a list of all debts and damages, and all the reprises considered by the freeholders in finding the inquest.

No deed shall be executed by a sheriff to the purchaser of lands or tenements, unless the proceedings respecting the sale thereof shall be first approved by the court from which the execution issued.

13. Whenever

13. Whenever a person, not being an executor or administrator, appeals from a decree of the chancellor, or applies for a Writ of Error, such appeal or writ shall be no stay of proceeding in the chancery, or the court to which the writ issues, unless the appellant or plaintiff in error shall give sufficient security, to be approved respectively by the chancellor, or by the clerk of the court from which the writ issues, that the appellant or plaintiff in error shall prosecute respectively his appeal or writ to effect, and pay the condemnation money and all costs, or otherwise abide the decree in appeal or the judgment in error, if he fail to make his plea good.

14. No writ of error shall be brought upon any judgment heretofore confessed, entered, or rendered, but within five years; from this time; nor upon any judgment hereafter to be confessed, entered or rendered, but within five years after the confessing, entering or rendering thereof; unless the person entitled to such writ be an infant, feme-covert, non compos mentis, or a prisoner, and then within five years, exclusive of the time of such disability.

15. The equity jurisdiction, heretofore exercised by the Judges of the Common Pleas, shall be separated from the common law jurisdiction, and vested in a Chancellor, who shall hold Courts of Chancery in the several counties of this state. The Chancellor shall hold his office as long as he shall behave himself well therein, and shall be removeable as Judges of the Supreme Court and Common Pleas are by this constitution to be. The Prothonotaries of the several counties shall be clerks in Chancery in their respective counties.

16. The judges of the Common Pleas, or any two of them, shall compose the Orphans court of each county, and may exercise the equity jurisdiction heretofore exercised by the Orphans Courts, except as to the adjusting and settling executors, administrators or guardians accounts; in which case they shall have an appellate jurisdiction from the sentence or decree of the register. This court may issue process throughout the state, to compel the attendance of witnesses. Appeals may be made from the Orphans Court, in cases where that court has original jurisdiction, to the Supreme court, whose decision shall be final.

17. An executor, administrator, or guardian, shall file every account with the register for the county, who shall as soon as conveniently may be, carefully examine the particulars with the proofs thereof, and adjust and settle the same, according to the very right of the matter and the law of the land; which account so settled shall remain in his office for inspection; and the executor,

tor, administrator, or guardian, shall within three months after such settlement, give due notice in writing to all persons entitled to shares of the estate, or to their guardians respectively, if residing within the state, that the account is lodged in the said office for inspection; and the judges of that court shall hear the exceptions of any persons concerned, if any be made, and thereupon allow no demand whatever against the estate of the deceased, unless upon consideration of all circumstances, they shall be fully convinced that the same is therewith justly chargeable.

18. The registers of the several counties shall respectively hold the Register's court in each county. Upon the litigation of a cause, the depositions of the witnesses examined shall be taken at large in writing, and make part of the proceedings in the cause. This court may issue process throughout the state, to compel the attendance of witnesses. Appeals may be made from a Register's Court to the Supreme Court, whose decision shall be final.

19 The Prothonotaries of the Common Pleas may issue process as heretofore, take recognizances of bail, and sign confessions of judgment; and the clerks of the Supreme Court shall have the like powers. No judgment in the Supreme Court or Common Pleas held for one county, shall bind lands or tenements in another, until a Testatum Fieri Facias being issued, shall be entered, of record in the office of the prothonotary of the county wherein the lands or tenements are situated.

20. The judges of the Common Pleas shall by virtue of their offices, compose the courts of General Quarter Sessions of the Peace and Gaol Delivery within the several counties. Any two of the said judges shall be a quorum.

21. The governor shall appoint a competent number of persons to the office of justice of the peace, not exceeding twelve in each county, until two thirds of both houses of the legislature shall by law direct an addition to the number, who shall be commissioned for seven years, if so long they shall behave themselves well; but may be removed by the Governor within that time on conviction of misbehaviour in office, or on the address of both Houses of the Legislature.

22. The style in all process and public acts shall be, **THE STATE OF DELAWARE.** Prosecutions shall be carried on in the name of the State, and shall conclude *against the peace and dignity of the State.*

ARTICLE

ARTICLE VII.

Section 1. There shall be a court, stiled, *The High Court of Errors and Appeals*, which shall consist of the judges of the Supreme Court and the Common Pleas, and of the chancellor. Any four of the judges of this court may proceed on business; but any smaller number may open and adjourn the court. If any of them has rendered judgment or passed a decree in any cause before removal, he shall not sit judicially upon the hearing of the same in this court, but may assign the reasons upon which such judgment was rendered, or such decree passed. The Chief Justice of the Supreme Court shall preside, except when he cannot sit judicially; and in such cases, or in his absence, the Chief Justice of the Common Pleas; but if he is so disqualified or absent, then the chancellor shall preside; and if he is so disqualified or absent, then the next eldest judge according to priority in date of commissions, if present, and not disqualified as aforesaid, shall preside. This court shall have power to issue writs of error to the Supreme Court, and to the Common Pleas, and to receive and determine appeals from interlocutory or final decrees of the chancellor. Errors shall be assigned, and causes of appeal exhibited in writing speedily, and citations duly served on adverse parties.

2. Upon the reversal of a judgment or decree of the Supreme Court, or the Common Pleas, or decree of the Chancellor, this court shall respectively render such judgment, or pass such decree, as the Supreme Court or the Common Pleas, or the Chancellor ought to have rendered or passed, except where the reversal is in favor of the plaintiff or petitioner in the original suit, and the damages to be assessed, or the matters to be decreed, are uncertain: in any of which cases, the cause shall be remanded, in order to a final decision.

3. The judges of this court may issue all process proper for bringing records fully before them, and for carrying their determinations into execution.

ARTICLE VIII.

Section 1. The members of the senate and house of representatives, the judges of the Supreme Court, and the Common-Pleas, and the Chancellor, shall by virtue of their offices,
be

be conservators of the peace throughout the state; and the treasurer, attorney-general, secretary, clerks of the Supreme court, prothonotaries, registers, recorders, sheriffs, and coroners, shall by virtue of their offices, be conservators thereof within the counties respectively in which they reside.

2. Provision respecting the militia shall be made by law, conformably to the constitution of the United States.

3. The representative, and when there shall be more than one, the representatives of the people of this state in Congress, shall be voted for at the same places where representatives in the state legislature are voted for, and in the same manner.

4. The state treasurer shall be appointed annually by the House of Representatives with the concurrence of the Senate. No person, who hath served in the office of State Treasurer, shall be eligible to a seat in either House of the Legislature, until he shall have made a final settlement of his accounts as Treasurer.

5. Two persons for the office of sheriff, and two for the office of coroner, shall be chosen by the citizens residing in each county, and having right to vote for representatives, at the time and places of election of representatives; one of whom for each office respectively, shall be appointed by the governor. They shall hold their offices for three years, if so long they shall behave themselves well, and until successors be duly qualified; but no person shall be twice chosen or appointed sheriff in any term of six Years. The Governor shall fill vacancies in these offices by new appointments to continue unto the next general election, and until successors shall be chosen and duly qualified. Every sheriff shall keep a regular statement and account of all monies received by him as sheriff, and of the application thereof, and of all fees becoming due to him; and within three months after the expiration of his office, shall deposit the book containing the same, or a true duplicate thereof among the records of the Prothonotary's office, there to remain for inspection under such penalties for default as shall be prescribed by the Legislature; and in like manner shall return a statement and account of all monies received and applied, and fees becoming due upon sales made by him after the expiration of his office, within three months after every such sale. The Legislature, two thirds of each branch concurring, may when it shall be judged expedient, vest the appointment of sheriffs in the governor; but no person shall be twice appointed sheriff in any term of six Years.

6. The

6. The attorney-general, clerks of the Supreme Court, prothonotaries, registers, clerks of the Orphans Courts, and of the peace, shall respectively be commissioned for five years if so long they shall behave themselves well; but may be removed by the Governor within that time, on conviction of misbehaviour in office, or on the address of both Houses of the Legislature. Prothonotaries, clerks of the Supreme Court, of the Orphans Courts, registers, recorders, and sheriffs, shall keep their offices in the town or place in each county, in which the Supreme Court and the court of Common-Pleas are usually held.

7. All inferior officers in the treasury department, attorneys at law, election officers, officers relating to taxes, to the poor, and to highways, constables, and hundred officers, shall be appointed in such manner as is or may be directed by law.

8. All salaries and fees annexed to offices shall be moderate; and no officer shall receive any fees whatever, without giving to the person who pays, a receipt for them, if required, therein specifying every particular and the charge for it.

9. No costs shall be paid by a person accused, on a bill being returned ignoramus; nor on acquittal by a Jury, unless a majority of the judges present at the trial certify, that there was probable cause for the prosecution.

10. The rights, privileges, immunities, and estates of religious societies and corporate bodies, shall remain as if the constitution of this state had not been altered. No clergyman or preacher of the gospel, of any denomination, shall be capable of holding any civil office in this state, or of being a member of either branch of the legislature while he continues in the exercise of the pastoral or clerical functions.

11. All the laws of this state, existing at the time of making this constitution, and not inconsistent with it, shall remain in force, unless they shall be altered by future laws: and all actions and prosecutions now pending, shall proceed as if this constitution had not been made.

12. This constitution shall be prefixed to every edition of the laws made by direction of the legislature.

13. The legislature shall, as soon as conveniently may be, provide by law, for ascertaining what statutes and parts of statutes, shall continue to be in force within this state; for reducing them, and all acts of the General-Assembly, into such order, and publishing

lishing them in such manner, that thereby the knowledge of them may be generally diffused; for choosing inspectors and judges of elections, and regulating the same in such manner, as shall most effectually guard the rights of the citizens entitled to vote; for better securing personal liberty, and easily and speedily redressing all wrongful restraints thereof; for more certainly obtaining returns of impartial juries; for dividing lands and tenements in sales by sheriffs, where they will bear a division, into as many parcels as may be without spoiling the whole, and for advertising and making the sales in such manner, and at such times, and places, as may render them most beneficial to all persons concerned; and for establishing schools, and promoting arts and sciences in one or more seminaries of learning.

ARTICLE IX.

Members of the General-Assembly, and all officers executive and judicial, shall be bound by oath or affirmation, to support the constitution of this state, and to perform the duties of their respective offices with fidelity.

ARTICLE X.

The General Assembly, whenever two thirds of each House shall deem it necessary, may with the approbation of the Governor, propose amendments to this constitution, and duly publish them in print for the consideration of the people, at least three, and not more than six months before the next general election of representatives; and if three fourths of each branch of the legislature, shall after such an election, and before another, ratify the said amendments, they shall be valid to all intents and purposes, as parts of this Constitution. No Convention shall be called but by the authority of the people; and an unexceptionable mode of making their sense known, will be for them, at a general election of representatives, to vote also by ballot *for* or *against* a Convention, as they shall severally choose to do; and if thereupon it shall appear, that a majority of all the citizens in the state voting for Representatives, have voted for a Convention, the General Assembly shall accordingly at their next sessions, call a Convention, to consist of at least as many members as there are in both Houses of the Legislature, to be chosen in the same manner, at the same places, and at the same time that Representatives

representatives are, by the citizens entitled to vote for Representatives, on due notice to them given for one month, and to meet within three months after the said election.]

A motion was made by Mr. Roche, seconded by Mr. Ridgely,

That the foregoing Draught of a Constitution of Government, be printed and published for the consideration of the people of this state.

It was then moved by Mr. Clayton, seconded by Mr. Mitchell,

That the last motion be postponed, in order to take into consideration the following:

That the proposed Constitution, reported by the Committee of the Whole, be read and considered in this Convention by sections.

On the question to postpone, the Yeas and Nays were required by Mr. Mitchell, and are as follow:

Y E A S.

Mr. Haughey,
Mr. Clayton,
Mr. Emmerfon,

Y E A S.

Mr. Mitchell,
Mr. Batson.

N A Y S.

Mr. Montgomery,
Mr. Armstrong,
Mr. Roche,
Mr. Coram,
Mr. Johns,
Mr. Ridgely,
Mr. Morris,
Mr. Bassett,
Mr. Molleston,

N A Y S.

Mr. Johnson,
Mr. Monroe,
Mr. Tatnall,
Mr. Cooper,
Mr. Shankland,
Mr. C. Polk,
Mr. Beauchamp,
Mr. Collins.

So it passed in the negative.

On the question to adopt the original motion, viz.

That the foregoing Draught of the Constitution of Government, be printed and published for the consideration of the people of this state; the same was determined in the affirmative.

Ordered,

Ordered, that Mr. Roche, Mr. Johns and Mr. Coram be a committee for the purpose of printing and publishing the same; who are hereby directed to procure nine hundred copies, and transmit to each member of this convention thirty copies, in order that he may distribute the same in his neighbourhood.

Ordered, that three hundred copies of the minutes of this convention, and of the committee of the whole, be printed under the direction of the Secretary.

On motion of Mr. Ridgely, seconded by Mr. Johns,

Resolved, That the following address to the General Assembly be adopted, viz.

Gentlemen,

THE Convention, chosen "for the purpose of reviewing, altering, and amending the Constitution of this state, or if they see occasion, for forming a new one instead thereof," found that system so very deficient, and inadequate to the great purposes of government, that they became obliged, from a duty they owed to their constituents, to propose an almost entire new Plan. In the investigation of this subject, from the great variety of opinions that prevailed, it became necessary to proceed with much deliberation, and a proper respect to those opinions: This produced delay, but at the same time it caused a thorough reflection on the subject, and at last great harmony and reconciliation. We have directed the proposed Constitution to be published for the consideration of our fellow-citizens; and should the session of your Honorable Body continue till a copy can be had, the same will be laid before you.

Several incidental expenses have been incurred, which have not been provided for by your resolutions: these we recommend to the consideration of your honorable house.

Signed, by Order of the Convention,

*To the Honorable the
General Assembly
of Delaware.*

Ordered, that the foregoing Address be transcribed, and signed by the President of this Convention—which was done accordingly.

The

The Convention allowed the following accounts for the attendance of the members, and for services rendered, to wit,

To Honbl. John Dickinson, President, for 35	days attendance and mileage,	do.	21	19	4
Thomas Montgomery, for 34	do.	do.	22	2	8
Robert Armstrong, for 35	do.	do.	22	10	8
Edward Roche, for 35	do.	do.	21	17	4
Robert Haughey, for 35	do.	do.	22	3	4
George Monroe, for 35	do.	do.	22	13	4
Robert Coram, for 35	do.	do.	22	13	4
Joseph Tatnall, for 35	do.	do.	21	6	8
William Johnston, for 34	do.	do.	21	14	0
Kensley Johns, for 33	do.	do.	19	4	0
Nicholas Ridgely, for 32	do.	do.	19	16	0
John Clayton, for 33	do.	do.	14	16	0
Robert Holliday, for 24	do.	do.	18	12	0
Thomas White, for 29	do.	do.	19	4	0
Manlove Emmerson, for 32	do.	do.	20	4	0
James Morris, for 33	do.	do.	19	16	0
James Sykes, for 33	do.	do.	19	16	0
Richard Bassett, for 33	do.	do.	18	12	0
Benjamin Dill, for 31	do.	do.	18	12	0
Henry Mollenston, for 31	do.	do.	22	13	4
Isaac Cooper, for 35	do.	do.	21	2	0
George Mitchell, for 31	do.	do.	19	18	8
John W. Batson, for 31	do.	do.	19	6	8
Peter Robinson, for 30	do.	do.	22	10	0
Rhoads Shankland, for 35	do.	do.	16	14	2
Charles Polk, for 26	do.	do.	22	4	8
Isaac Beauchamp, for 34	do.	do.	21	12	0
John Collins, for 34	do.	do.	6	9	4
William Moore, for 8	do.	do.	20	19	0
Daniel Polk, for 33	do.	&c.	33	14	10
James Booth, Sec. for 27	do.	&c.	12	2	6
Charles Nixon, Assistant Sec. for 17	do.	&c.	29	11	11
Thomas Wilds, doorkeeper and messenger,			1	10	0
James Wakeman, for four writing stands,					
			<hr/> £. 690 . 15 . 4 <hr/>		

Ordered, that orders be drawn on the state treasurer, and signed by the President, for the payment of the several sums aforesaid: whereupon orders were drawn and signed accordingly.

T

Then

Then the Convention adjourned to Tuesday, the twenty-ninth day of May next.

The Attest:

By virtue of an order of the Convention, I do appoint Messrs. Peter Brynberg and Samuel Andrews to print these Minutes.

James Booth.



J. M.

10/20/19

